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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,566	07/17/2000	Samuel P. Sawan	SUR-004DVCN	8355

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LEVY, NEIL S

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

09

Application No.

617566

Applicant(s)

JAWAN et al

Examiner

MC Ley

Group Art Unit

166

**—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—****P r i o r i t y Reply**

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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

Responsive to communication(s) filed on 12/5/02  
 This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 25-33, 35-49 is/are pending in the application.  
 Of the above claim(s) 37 - 49 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 25-33, 35-49 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

**Pri ority under 35 U.S.C. § 119 (a)-(d)**

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

<input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____	<input type="checkbox"/> Interview Summary, PTO-413
<input type="checkbox"/> Notice of Reference(s) Cited, PTO-892	<input type="checkbox"/> Notice of Informal Patent Application, PTO-152
<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948	<input type="checkbox"/> Other _____

**Office Action Summary**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 37-49 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

The rejections under 35 USC 112 are withdrawn in view of applicant's amendments explanations and exhibits.

Claims 25-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,849,311. Although the conflicting claims are not identical, they are not patentably distinct from each other because the rejection of record is still maintained.

Claims 25-28, 31, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Mermel et al '93.

The rejection of record is still maintained.

The instant invention is here: A catheter surface, of an article, coated with a polycationic polymer (p.920, col. 2) P. 921, col. 1, top) with, attached thereto, silver, as impregnated with silver sulfadiazine, which exhibited antimicrobial surface activity (p.921, col. 2 last paragraph of results section. The surface activity shows the instant conditions. See. P. 923, Last paragraph, if there is a difference between the instant invention, and that as it is claimed, perhaps there is a means, unclaimed, to provide this difference. As such means is undifuged, the chlorhexide silver sulfadiazine coated catheter is the same as the instant N-polycationic matrix with antimicrobial metal, which

does not release biocidal amounts of elutables; We assume, since no method is claimed, the release to be dependent on time and the environment. Neither are factors in the composition per se.

Claims 25-27, 31, 32, 35 are rejected under 35 U.S.C. 102(a) as being anticipated by Honda et al JP 08176527.

Honda shows cross linked guanidyl silicone matrices coated on article surfaces (Translation) P. 6,005. With a metal oxide, zinc (0007, p.7, which provides surface antimicrobial efficacy (top, P.8). The surface is antimicrobial, no indication Leaching was shown, and (see examples) effects were remarkable (last paragraph). Crosslinking agents are at p.17 (0033); the surfaces are textiles, fabrics, paper (answer products) (0001, P.5). This invention, crosslinked, was not disclosed in the 1994 PCT, of which the current application is a CIP filed 10/28/96. If the cross link functionality is required for the non leaching, this is not shown in the PCT.

Claims 25, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawamur et al JP 05033217.

The rejection of record is maintained; fiber Polyurethane surfaces – see P. 12 – were treated with polyhexanethylene biquanide and zinc oxide. This is the instant coating or an article. There is no Leaching, even after repeated washing (P. 15, 0020).

Claims 25-28, 30-32, 35 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Fox et al 5019096.

The rejection of record is maintained.

See col. 15, lines 10-19). The instant coated article, no leaching, as it is the same see also example 2. Prolonged antibacterial activity is seemed in these (Example). Fox, No weight of patent able nature attributable to how it functions or environment of use shows the invention as claimed.

Applicant's arguments filed on 12/05/02 have been fully considered but they are not persuasive. Applicant's arguments are to effect that cited art fails to identify a cationic N polymer, with non Leaching. Examiner has responded to those rejections maintained as in fact providing the instant polymer with Metal thus, having the same instant functionalities, whatever they are, by necessity. If, in fact this is incorrect, this the claimed articles are insufficiently claimed to enable distinction from the cited art, and further limitations need be identified in the claims to provide the non leaching distinction between the instant and prior art inventions.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR  
March 3, 2003



NEIL S. LEVY  
PRIMARY EXAMINER